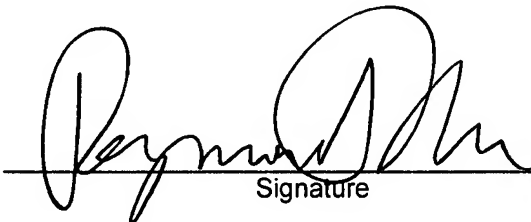


APR 16 2007

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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------|
| | | 2018-804 |
| Application Number | | Filed |
| 10/734,285 | | April 16, 2007 |
| First Named Inventor | | |
| MIYAMOTO et al. et al. | | |
| Art Unit | | Examiner |
| 3661 | | Broadhead, B. |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> Applicant/Inventor</p> <p><input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> Attorney or agent of record <u>41,426</u> (Reg. No.)</p> <p><input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p> | | |



Signature

Raymond Y. Mah

Typed or printed name

703-816-4044

Requester's telephone number

April 16, 2007

Date

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STATEMENT OF ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF
REQUEST FOR REVIEW

The following listing of clear errors is responsive to the final rejection mailed December 14, 2006 and the advisory action mailed March 23, 2007.

The final rejection fails to establish that claims 18, 21 and 23 are indefinite under 35 U.S.C. §112, second paragraph

Dependent claims 18, 21 and 23 were rejected in the final rejection under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. In particular, the final rejection alleged that "In claim 18, it appears that the PF interface is being called a structure of data provided through the PF interface." Applicant respectfully disagrees with this allegation. Applicant submits that this claim is clear that the PF interface is not being called a structure of data provided through the PF interface. To add even further clarity, an editorial amendment to dependent claim 18 was proposed in Applicant's March 6, 2007 Amendment/Response. The proposed amendment to claim 18 involved adding commas as follows: "an object standardized, as the PF interface, is a structure of a data provided through the PF interface...." Accordingly, this editorial amendment (i.e., the addition of commas) provides even greater clarity that the PF interface is not being called a structure of data provided through the PF interface.

The record of this application is thus clear: the PF interface is not being called a structure of data provided through the PF interface. Applicant thus respectfully requests that the rejection of claim 18 under 35 U.S.C. §112, second paragraph be withdrawn.

In Applicant's March 6, 2007 Amendment/Response, dependent claim 21 was editorially revised to require "wherein the AP interface is constructed such that the data converted by the coupling processing program is referred to by the processing using the application program." This claim clearly recites that processing using the application program refers to converted data.

The data is converted by the coupling processing program. Again, the record is entirely clear regarding this point.

Accordingly, Applicant respectfully requests the rejection of claims 18, 21 and 23 under 35 U.S.C. §112, be withdrawn. The above amendments provide even greater clarity to the claims, and entry of these amendments is therefore in order as issues for appeal would clearly be reduced.

The advisory action mailed March 23, 2007 states “The claims even if amended still have clarity issues and would still be objected to and rejected under 35 USC 112.” However, the advisory action provides absolutely no detail whatsoever regarding how or why the claims “would still be objected to and rejected under 35 USC 112.” Appropriate detail is thus respectfully requested. Applicant has addressed all of the comments of the final rejection with respect to this rejection, and believes that dependent claims 18, 21 and 23 are in full conformance with 35 U.S.C. §112.

The final rejection fails to establish that claims 17-23 are anticipated under 35 U.S.C. §102(b) by Sakai et al (U.S. ‘249, hereinafter “Sakai”)

In the final rejection, claims 16-23 were rejected under 35 U.S.C. §102 as allegedly being anticipated by Sakai. Applicant respectfully traverses this rejection with respect to still pending claims 17-23.

Anticipation under Section 102 of the Patent Act requires that a prior art reference disclose every claim element of the claimed invention. See, e.g., *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1574 (Fed. Cir. 1986). Sakai fails to disclose every claim element of the claimed invention. For example, Sakai fails to disclose “the platform program makes the computer perform an inputting and storing operation at every first predetermined interval; and the coupling program makes the computer perform a converting and storing operation at every second predetermined interval, the second predetermined interval being

different from the first predetermined interval,” as required by claim 17 (rewritten in independent form in the March 6, 2007 Amendment/Response) and its respective dependents.

Section 4 (page 5) of the final rejection states “As per the argument with respect to intervals, Sakai et al. discloses that the converted data can be outputted at any desired interval. The different intervals are functional language that the invention of the Sakai is capable of performing (emphasis added).”

Sakai clearly fails to disclose two different processing programs (the platform processing program and the coupling processing program) operating at different intervals. The general allegation that Sakai is “capable” of performing different intervals as claimed is clearly insufficient for a disclosure of this explicitly required claim limitation. The absence of any element of the claim from the cited reference negates anticipation. See, e.g., *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 715 (Fed. Cir. 1984). Anticipation is not shown even if the differences between the claims and the prior art reference are insubstantial and the missing elements could be supplied by the knowledge of one skilled in the art. See, e.g., *Structural Rubber Prods.*, 749 F.2d at 716-17.

Accordingly, even assuming *arguendo* that a reference might be “capable” of disclosing a particular claim limitation, this does not mean that the reference actually does disclose this claim limitation. Applicant therefore submits that Sakai fails to disclose every element of the claimed invention.

The advisory action contradicts the final rejection’s allegation that Sakai is merely “capable” of performing different intervals as claimed, and instead alleges that Sakai (the cited prior art) “still discloses the two different intervals required.” However, the advisory action provides no basis for this unsupported allegation. Instead, the advisory action merely states “Sakai et al. discloses converting data and preparing packets for different protocols in the conversion unit 200. Changing the length of data and protocol used by the data is going to

change the interval required to transmit the data (emphasis added).” Even assuming *arguendo* that Sakai’s system uses different protocols, there is no requirement or disclosure that the use of different protocols necessarily results in a first predetermined interval for an inputting and storing operation in a platform program being different than a second predetermined interval for a converting and storing operation in a coupling program. Moreover, even assuming *arguendo* that changing the length of data changes a transmission interval as alleged by the advisory action, there is no requirement or disclosure that a different transmission interval necessarily results in a first predetermined interval for an inputting and storing operation in a platform program being different than a second predetermined interval for a converting and storing operation in a coupling program. That is, the intervals (i) for an inputting and storing operation in a platform program and (ii) for a converting and storing operation in a coupling program are not made different from each other based on a change in data length.

The above noted claim limitations are supported by, for example, Fig. 5B of the present application which illustrates the platform processing program 2 and the coupling processing program 3 performing operations at different intervals (1 ms and 16 ms).

Moreover, Sakai further fails to teach or suggest two different processing programs (platform and coupling processing programs) operating at different intervals and two different memory sections under management of these two different programs. By way of example, memory 13 in Fig. 1 of the present application includes a first section and a second section for storing first and second data under the management of the platform processing program 2 and the coupling processing program 3, respectively. The first section and the second section are independent from each other. Through these related features, an application program 4 (not related to hardware devices) can be modified easily without necessitating corresponding modifications of the platform processing program 2 (related to the hardware devices), because the application program 4 can use the second data stored in the second section (not managed by

the platform program 2), not the first data in the first section (managed by the platform program 2). This is exemplified in Fig. 5B in comparison to Fig. 6, in which an application program AP must be modified taking into account the platform program PF.

In Sakai, a communication conversion part 200 converts data received by a driver unit 300 and stores it in a common memory 210 in a form user by application unit 100 (see column 7, lines 52-59). Each time the driver unit 300 receives data, the communication conversion unit 200 converts and stores (updates) it in common memory 210. There is no disclosure of two different programs (platform and coupling processing) operating at different intervals and two memory areas under management of these two different programs. Page 5 of the final rejection apparently alleges that column 10, lines 50-58 discloses the above limitations. However, this description merely means that an engine application software 110 writes data in a common memory. This is not related to driver unit 300 (platform program).

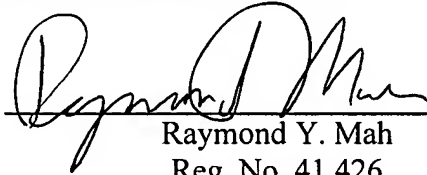
Conclusion

Applicant therefore respectfully requests that the pre-appeal panel find that this application is allowable. If the panel has any questions, the panel is invited to telephone the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

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